

AMENDED IN ASSEMBLY AUGUST 24, 2006
AMENDED IN ASSEMBLY AUGUST 17, 2006
AMENDED IN ASSEMBLY AUGUST 7, 2006
AMENDED IN ASSEMBLY JUNE 28, 2006
AMENDED IN ASSEMBLY JUNE 8, 2006
AMENDED IN ASSEMBLY MAY 4, 2006
AMENDED IN ASSEMBLY MARCH 15, 2006
AMENDED IN ASSEMBLY AUGUST 18, 2005

SENATE BILL

No. 202

Introduced by Senators Simitian, Figueroa, and Maldonado
(Principal coauthors: Assembly Members Leno and Pavley)
(Coauthors: Assembly Members Benoit, Cohn, and Houston)

February 10, 2005

An act to add Section 638 to the Penal Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 202, as amended, Simitian. Privacy: telephone calling pattern record or list.

Existing law prohibits a telephone or telegraph corporation, with certain exceptions, from making available to any other person or corporation, without first obtaining a residential subscriber's consent in writing, the subscriber's personal calling patterns, including any listing of the telephone or other access numbers called by the subscriber.

Existing law pertaining to the protection of privacy, makes it a crime, punishable by fine or imprisonment or both, with certain exceptions, to wiretap, eavesdrop, or otherwise intercept telephone or telegraph communications without authorization.

This bill would make it a crime, punishable by fine, imprisonment, or both, to purchase, sell, offer to purchase or sell, or conspire to purchase or sell, without the written consent of the subscriber, or procure through fraud or deceit, a telephone calling pattern record or list. Because a violation of the bill's provisions would be a crime, this bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 638 is added to the Penal Code, to read:
- 2 638. (a) Any person who purchases, sells, offers to purchase
- 3 or sell, or conspires to purchase or sell any telephone calling
- 4 pattern record or list, without the written consent of the
- 5 subscriber, or any person who procures or obtains through fraud
- 6 or deceit, or attempts to procure or obtain through fraud or deceit
- 7 any telephone calling pattern record or list shall be punished by a
- 8 fine not exceeding two thousand five hundred dollars (\$2,500), or
- 9 by imprisonment in a county jail not exceeding one year, or by
- 10 both a fine and imprisonment. If the person has previously been
- 11 convicted of a violation of this section, he or she is punishable by
- 12 a fine not exceeding ten thousand dollars (\$10,000), or by
- 13 imprisonment in a county jail not exceeding one year, or by both
- 14 a fine and imprisonment.
- 15 (b) Any personal information contained in a telephone calling
- 16 pattern record or list that is obtained in violation of this section
- 17 shall be inadmissible as evidence in any judicial, administrative,
- 18 legislative, or other proceeding except when that information is

1 offered as proof in an action or prosecution for a violation of this
2 section, or when otherwise authorized by law, in any criminal
3 prosecution.

4 (c) For purposes of this section:

5 (1) “Person” includes an individual, business association,
6 partnership, limited partnership, corporation, limited liability
7 company, or other legal entity.

8 (2) “Telephone calling pattern record or list” means
9 information retained by a telephone company that relates to the
10 telephone number dialed by the subscriber, or other person using
11 the subscriber’s telephone with permission, or the incoming
12 number of a call directed to the subscriber, or other data related
13 to such calls typically contained on a subscriber telephone bill
14 such as the time the call started and ended, the duration of the
15 call, any charges applied, and any information described in
16 subdivision (a) of Section 2891 of the Public Utilities Code
17 whether the call was made from or to a telephone connected to
18 the public switched telephone network, a cordless telephone, as
19 defined in Section 632.6, a telephony device operating over the
20 Internet utilizing voice over Internet protocol, a satellite
21 telephone, or commercially available interconnected mobile
22 phone service that provides access to the public switched
23 telephone network via a mobile communication device
24 employing radiowave technology to transmit calls, including
25 cellular radiotelephone, broadband Personal Communications
26 Services, and digital Specialized Mobile Radio.

27 (3) “Telephone company” means a telephone corporation as
28 defined in Section 234 of the Public Utilities Code or any other
29 person that provides residential or commercial telephone service
30 to a subscriber utilizing any of the technologies or methods
31 enumerated in paragraph (2).

32 (4) For purposes of this section, “purchase” and “sell” shall
33 not include information provided to a collection agency or
34 assignee of the debt by the telephone corporation, and used
35 exclusively for the collection of the unpaid debt *assigned by the*
36 *telephone corporation*, provided that the collection agency or
37 assignee of the debt shall be liable for any disclosure of the
38 information that is in violation of this section.

39 (d) An employer of, or entity contracting with, a person who
40 violates subdivision (a) shall only be subject to prosecution

1 pursuant to that provision if the employer or contracting entity
2 knowingly allowed the employee or contractor to engage in
3 conduct that violated subdivision (a).

4 (e) It is the intent of the Legislature to ensure that telephone
5 companies maintain telephone calling pattern records or lists in
6 the strictest confidence, and protect the privacy of their
7 subscribers with all due care. While it is not the intent of the
8 Legislature in this act to preclude the sharing of information that
9 is currently allowed by both state and federal laws and rules
10 governing those records, it is the Legislature's intent in this act to
11 preclude any unauthorized purchase or sale of that information.

12 (f) This section shall not be construed to prevent a law
13 enforcement or prosecutorial agency, or any officer, employee, or
14 agent thereof from obtaining telephone records in connection
15 with the performance of the official duties of the agency
16 consistent with any other applicable state and federal law.

17 (g) Nothing in this section shall preclude prosecution under
18 any other provision of law.

19 (h) The Legislature hereby finds and declares that,
20 notwithstanding the prohibition on specific means of making
21 available or obtaining personal calling records pursuant to this
22 section, the disclosure of personal calling records through any
23 other means is no less harmful to the privacy and security
24 interests of Californians. This section is not intended to limit the
25 scope or force of Section 2891 of the Public Utilities Code in any
26 way.

27 SEC. 2. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the
32 penalty for a crime or infraction, within the meaning of Section
33 17556 of the Government Code, or changes the definition of a
34 crime within the meaning of Section 6 of Article XIII B of the
35 California Constitution.